

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 31, 2021

1:35 p.m.

**MEMBERS PRESENT**

Senator Lora Reinbold, Chair  
Senator Mike Shower, Vice Chair  
Senator Shelley Hughes  
Senator Robert Myers  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CONFIRMATION HEARING(S) :

Board of Parole  
Steve Meyer - Kenai  
Leitoni "Lei" Tupou - Juneau

- CONFIRMATIONS ADVANCED

Public Defender  
Samantha Cherot - Anchorage

- CONFIRMATION ADVANCED

SENATE BILL NO. 65

"An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, dentists, optometrists, and pharmacists."

- MOVED CSSB 65(JUD) OUT OF COMMITTEE

SENATE BILL NO. 15

"An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

- HEARD & HELD

## PREVIOUS COMMITTEE ACTION

BILL: SB 65

SHORT TITLE: LIABILITY CONSULTING HEALTH CARE PROVIDER

SPONSOR(s): SENATOR(s) KIEHL

02/03/21	(S)	READ THE FIRST TIME - REFERRALS
02/03/21	(S)	HSS, JUD
02/16/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/16/21	(S)	Heard & Held
02/16/21	(S)	MINUTE(HSS)
02/18/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/18/21	(S)	OPIOID OVERDOSE DRUGS
02/19/21	(S)	HSS RPT CS 3DP 1NR NEW TITLE
02/19/21	(S)	DP: WILSON, BEGICH, HUGHES
02/19/21	(S)	NR: REINBOLD
03/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/05/21	(S)	-- MEETING CANCELED --
03/08/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/08/21	(S)	Heard & Held
03/08/21	(S)	MINUTE(JUD)
03/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/12/21	(S)	Heard & Held
03/12/21	(S)	MINUTE(JUD)
03/31/21	(S)	JUD AT 1:30 PM BUTROVICH 205

BILL: SB 15

SHORT TITLE: OPEN MEETINGS ACT; PENALTY

SPONSOR(s): SENATOR(s) COSTELLO

01/22/21	(S)	PREFILE RELEASED 1/8/21
01/22/21	(S)	READ THE FIRST TIME - REFERRALS
01/22/21	(S)	CRA, JUD
02/25/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/25/21	(S)	Heard & Held
02/25/21	(S)	MINUTE(CRA)
03/04/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/04/21	(S)	Heard & Held
03/04/21	(S)	MINUTE(CRA)
03/09/21	(S)	CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/09/21	(S)	Moved CSSB 15(CRA) Out of Committee
03/09/21	(S)	MINUTE(CRA)
03/10/21	(S)	CRA RPT CS 1DP 1DNP 2NR NEW TITLE
03/10/21	(S)	DP: HUGHES
03/10/21	(S)	DNP: GRAY-JACKSON
03/10/21	(S)	NR: MYERS, WILSON
03/17/21	(S)	JUD AT 1:30 PM BUTROVICH 205

03/17/21	(S)	Heard & Held
03/17/21	(S)	MINUTE (JUD)
03/22/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/22/21	(S)	Heard & Held
03/22/21	(S)	MINUTE (JUD)
03/31/21	(S)	JUD AT 1:30 PM BUTROVICH 205

#### **WITNESS REGISTER**

STEVE MEYER, Appointee  
Board of Parole  
Department of Corrections (DOC)  
Kenai, Alaska

**POSITION STATEMENT:** Testified as appointee to the Board of Parole.

LEITONI "LEI" TUPOU, Appointee  
Board of Parole  
Department of Corrections (DOC)  
Juneau, Alaska

**POSITION STATEMENT:** Testified as appointee to the Board of Parole.

SAMANTHA CHEROT, Appointee  
Public Defender  
Public Defender Agency  
Department of Administration  
Anchorage, Alaska

**POSITION STATEMENT:** Testified as appointee to the Public Defender Agency.

JEFF LANDFIELD, Editor-in-Chief  
Alaska Landmine  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of the Governors Appointees to Boards and Commissions.

CARRIE JOKIEL, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of appointee Samantha Cherot as Public Defender.

BEN MUSE, Attorney; representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of appointee Samantha Cherot as Public Defender.

JEFF ROBINSON, Attorney; representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of appointee Samantha Cherot as Public Defender.

MIKE COREY, Attorney; representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the confirmation hearing for Governor Appointees to Boards and Commissions.

MELODIE WILTERDINK, Staff  
Senator Mia Costello  
Juneau, Alaska

**POSITION STATEMENT:** Testified on behalf of the sponsor during the hearing on SB 15.

TERRY BANNISTER, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 15.

MIKE COREY, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified during the hearing on SB 15 with suggested changes.

LOUIS IMBRIANI, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of the penalty provisions in SB 15.

FRANK MCQUEARY, President  
Alaskans for Open Meetings  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of changes to the Open Meetings Act during the hearing on SB 15.

#### **ACTION NARRATIVE**

1:35:45 PM

**CHAIR LORA REINBOLD** called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Myers, Hughes, Shower, Kiehl, and Chair Reinbold.

**SB 65-LIABILITY CONSULTING HEALTH CARE PROVIDER**

[1:36:16 PM](#)

CHAIR REINBOLD announced the consideration of SB 65, SENATE BILL NO. 65, "An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, dentists, optometrists, and pharmacists."

[The committee amended CSSB 65(HSS), Version I during the 3/12/21 hearing.]

[1:37:13 PM](#)

SENATOR KIEHL stated that SB 65 will provide immunity from civil suits for medical professionals giving unpaid consults for patients not under their care. This bill was prompted by a Minnesota court ruling that interpreted medical liability that adversely affects medical professionals consulting with other medical professionals on patients. The liability remains with the health care provider who treats the patient, which has been a long-standing practice, he said.

[1:38:17 PM](#)

CHAIR REINBOLD solicited a motion.

[1:38:26 PM](#)

SENATOR SHOWER moved to report SB 65, Version I, as amended, from committee with individual recommendations and zero fiscal notes.

[1:38:45 PM](#)

At ease

[1:39:17 PM](#)

CHAIR REINBOLD reconvened the meeting. She remarked that she neglected to take public testimony on the bill.

CHAIR REINBOLD opened public testimony and, after first determining no one wished to testify, closed public testimony on SB 65. She solicited a motion.

[1:39:51 PM](#)

SENATOR SHOWER restated his motion. He moved to report SB 65, Version I, as amended, from committee with individual recommendations and zero fiscal notes. There being no further

objection, CSSB 65(JUD) was reported from the Senate Judiciary Standing Committee.

[1:40:01 PM](#)

At ease

**CONFIRMATION HEARING(S)**  
**Board of Parole**  
**Public Defender**

[1:42:13 PM](#)

CHAIR REINBOLD reconvened the meeting and announced the consideration of Governor Appointees to Boards and Commissions.

[1:42:44 PM](#)

STEVE MEYER, Appointee, Board of Parole, Department of Corrections (DOC), said he was originally appointed to the Board of Parole in 2016. He would like to serve because he has an extensive law enforcement background in corrections, probation and parole. When he retired in 2014, many people suggested he apply to serve on the board. He said he enjoys the work. Despite his background, he found that he has learned a lot about parole during his time on the board. He said he looks forward to serving because he thinks he will be an even better board member.

[1:44:12 PM](#)

SENATOR SHOWER asked if he has any convictions, ethical or other considerations to disclose that would cause a conflict, such as any "skeletons in his closet."

MR. MEYER answered no.

[1:45:17 PM](#)

SENATOR HUGHES noticed that his resume indicates he published 34 magazine articles. She asked for the range of topics his articles covered.

MR. MEYER, after clarifying the question, responded that he wrote most of his articles between 2010 and 2017, on topics about the outdoors, ranging from firearms, hunting and big game hunting. He currently writes a bi-weekly outdoor column for the Anchorage Daily News covering outdoor-related activities, such as hunting, shooting, and fishing. He said his real passion is writing about hunting with upland and waterfowl bird dogs.

[1:47:56 PM](#)

SENATOR SHOWER asked if he had any ideas for improvements.

MR. MEYER responded that the state tried a variety of approaches to address issues. For example, the legislature passed Senate Bill 91, which created a lot of pushback, although the bill contained many good provisions. He offered his view that improving the economy could help circumvent some issues. He acknowledged that while some mental health or substance abuse treatment is available, some people do not have good access to treatment.

1:51:49 PM

LEITONI "LEI" TUPOU, Appointee, Board of Parole, Department of Corrections (DOC), Testified as appointee to the Board of Parole, Kenai, Alaska, said he has lived in Alaska since he graduated from college. He previously worked as a parole officer, he said. He offered his view that the board plays a major role in the criminal justice system. He believes he has the knowledge to assist the board.

1:51:44 PM

SENATOR SHOWER asked if he has any conflicts, arrests, or convictions to disclose, if he has been involved in any activities that could create an ethical conflict and if he has reviewed the state ethics policy.

MR. TUPOU answered that he reviewed the ethics act but has no convictions, conflicts, or other issues that would create problems for him serving on the board.

1:54:50 PM

SAMANTHA CHEROT, Appointee, Public Defender, Public Defender Agency, Department of Administration, Anchorage, Alaska, stated that she is a lifelong Alaskan. She graduated from law school in California and pursued employment law for a few years. She also trained employers in how to comply with employment and labor laws. In 2009, she returned to Alaska, working primarily for the Department of Law in the criminal division, handling felony cases and gaining trial experience. She next worked for a law firm, Cashion Gilmore, LLC, continuing to work in criminal law and civil litigation. Since 2015, she has worked for the Public Defender Agency and is committed to her clients. She works with parents and children in Child in Need of Aid cases when the Office of Children's Services becomes involved. Her goal is to work towards family reunification, she said. In addition, she works with clients who struggle with mental health challenges, involuntary commitment and forced medication

proceedings. In all of these cases, she finds it rewarding to serve clients. She likes to see them achieve stability in their communities, maintain sobriety with substance abuse, better manage mental health treatment, secure housing and become healthier. In September 2019, she was selected to serve as public defender. She was reappointed this year to continue to serve.

1:56:47 PM

MS. CHEROT highlighted some challenges, such as vacancy rates, recruitment and retention issues. When she assumed this role, the agency had a significant vacancy rate for staff and attorneys. In its 13 offices, some offices were at half capacity. Today, the agency has two vacancies statewide. She acknowledged that the agency continues to lose experienced attorneys. Many new attorneys just graduated from law school and lacked the experience to conduct complicated felony criminal trials. During COVID-19, it has been difficult to serve clients and ensure that their constitutional rights are protected. The court system suspended jury trials for nearly a year, resulting in a mounting backlog of cases. It has been challenging to maintain in-person visits with clients during COVID-19. The Department of Corrections (DOC) has expanded its phone access and held Teams meetings, although many clients remain concerned about the confidentiality of their sensitive information. The DOC recently changed its policies and allowed those vaccinated to have in-person visitation, although not all clients choose to get vaccinated. She and her staff are committed to the mission of the public defender agency.

2:02:19 PM

SENATOR MYERS asked for the percentage of criminal cases that opt for plea bargains.

MS. CHEROT answered that it was a large majority of the cases.

SENATOR MYERS asked if justice is served in the plea bargain process.

MS. CHEROT answered that clients exercise their fundamental rights to decide whether their cases go to trial.

SENATOR MYERS related his understanding that 90 percent of cases nationwide resolved through plea bargaining, which seems high. He acknowledged that part of this is due to limited resources to take cases to trial. He asked whether the culture



within the Department of Law and the Public Defender Agency also plays a role.

MS. CHEROT explained that the Public Defender Agency trains attorneys to prepare for trial. Whether to accept a plea bargain is an imperative right of clients. She expressed concern that during COVID-19 some indigent clients may feel pressured to accept a plea agreement.

[2:04:56 PM](#)

CHAIR REINBOLD thanked her for working on behalf of clients to gain access to attorneys and visitors. She asked if any clients were released due to COVID-19.

MS. CHEROT answered not to her knowledge.

CHAIR REINBOLD advocated for the right to a speedy trial. She asked how COVID-19 has impacted those in pretrial or in the system.

MS. CHEROT agreed that clients have a fundamental right to a jury trial. She hopes to see the resumption of trials soon. She offered her view that the courts will start with misdemeanor trials first.

CHAIR REINBOLD said mandates for vaccines are troubling. She related her experiences with Hiland Mountain Correctional Facility. She asked her to keep the legislature informed on any issues.

[2:10:49 PM](#)

SENATOR KIEHL acknowledged that speedy trials are important. He asked for the impact to the public defender agency if an additional 15 to 20 percent of clients pushed for trials.

MS. CHEROT responded that a 15 percent increase in jury trials would greatly impact the agency workload and costs. She stated that attorneys are involved in investigations, review discovery, the right to confrontation, and preparing for trial. She said the attorney workloads are significant. Often attorneys are in the process of preparing for multiple trials, she said.

[2:13:27 PM](#)

SENATOR SHOWER asked if she has reviewed the ethics act, if she has any convictions or other ethical or other issues in her

background that would cause a conflict, such as any "skeletons in her closet."

MS. CHEROT answered that she has reviewed the ethics laws, the rules of professional conduct and does not have any "skeletons in her closet."

2:14:08 PM

SENATOR KIEHL asked for a sense of the attorney caseloads.

MS. CHEROT stated that she reviewed the National Advisory Commission Standards, which are out of date and other studies suggest that caseloads should be lower. Those studies recommended that attorneys should not have more than 150 felonies and 400 misdemeanor cases annually. She agreed that caseloads are problematic. She has contracted out some cases using non-salaried attorneys at a lower rate to provide some relief. She related that the current cases assigned to attorneys per year were likely fine, but carryover cases put them at the highest maximum caseload. Further, Covid-19 and a lack of jury trials have impacted overall caseloads. She offered to monitor attorney workloads and seek additional funding, if necessary.

2:16:18 PM

SENATOR HUGHES turned to vacancies, recruitment and retention. She asked if she has any particular strategies to address the issue. She asked for the agency vacancy rate at the time she was hired. She wondered if her strategies could be used in the prosecutor's office.

MS. CHEROT responded that the agency had an 18 percent vacancy rate when she joined 18 months ago. Currently, two attorneys and a few staff vacancies probably bring the vacancy rate below 5 percent or less. She offered to research this and report back to the committee.

She said she addressed vacancies by expanding the scope of the search to law schools. Further, she accelerated the hiring timeline, determined the best time to hire lawyers was the summer after graduation and hired non-permanent attorneys at a lower salary rate when vacancies arose. In addition, she worked to refine the training and mentoring program, she said.

SENATOR HUGHES asked how long she has served in this position.

MS. CHEROT answered she was appointed in September 2019, having served in her current position for 18 months.

2:20:09 PM

CHAIR REINBOLD asked for an update by the next legislative session on plea bargaining, any laws or regulations that were suspended due to COVID-19 that has impacted defendants, including clients in mental health institutions that could not meet with an attorney. She asked if she took an oath to uphold the Alaska Constitution.

MS. CHEROT answered that she took an oath through the Bar Association rules to uphold the U.S. Constitution and Alaska Constitution.

2:21:15 PM

CHAIR REINBOLD asked for the vaccine policy regarding client visitation, an update on cases and caseloads, including clients agreeing to plea bargaining. She expressed an interest in knowing which locations in the state have difficulty holding trials and areas with the most felonies. She asked her to provide feedback on treatment programs. She highlighted her goal is to help defendants become responsible citizens, so she would like to be certain opportunities are available.

2:22:53 PM

CHAIR REINBOLD turned to pretrial services. She expressed concern that defendants often seek to delay trials. She asked for ways the Public Defender Agency could help shrink the pretrial time. She suggested that a bill was before the legislature related to computer access.

MS. CHEROT responded that computer access is critical for reentry and rehabilitation since it provides clients in custody a means to complete Medicaid or other applications.

2:22:43 PM

CHAIR REINBOLD encouraged her not to forget about the victims and the importance of public safety and justice.

2:25:35 PM

CHAIR REINBOLD opened public testimony on the confirmation hearing for Steve Meyer, Leitoni "Lei" Tupou, and Samantha Cherot.

2:25:56 PM

JEFF LANDFIELD, Editor-in-Chief, Alaska Landmine, Anchorage, Alaska, said he has a website called the Alaska Landmine. He said this committee has consistently not noticed confirmation hearings, including hearings for appointees to the Parole Board and the Commission on Judicial Conduct. He highlighted the effect of not identifying specific boards or appointees is that the public is not aware of the hearing so people cannot testify. He said he often receives emails about the lack of adequate public noticing. In response to Chair Reinbold, he pointed out the committee held confirmations on two members of the Board of Parole today. However, the Board of Parole and appointees Steve Meyer - Kenai and Leitoni "Lei" Tupou - Juneau were not listed on the legislative Bill Action and Status Inquiry System (BASIS) meeting schedule. This means that adequate public notice was not given.

2:26:59 PM

CARRIE JOKIEL, representing self, Anchorage, Alaska, stated she has known Ms. Cherot for over 20 years. Ms. Cherot served on the YWCA board from 2011 to 2018. The YWCA mission is to eliminate racism and empower women. In 2016, Ms. Cherot joined the board, quickly demonstrated her skills and was elected president two years later. Ms. Cherot was diligent in recruiting and vetting candidates for a new chief executive officer that ultimately led to a strong hire. She worked to foster an enthusiastic group of board members. She had to make tough decisions but led the board in fiscally viable ways. She described Ms. Cherot as strong, practical, and fair.

2:28:42 PM

BEN MUSE, Attorney, representing self, Anchorage, Alaska, spoke in support of Ms. Cherot. He stated that he has worked for 10 years as an attorney 8 of which were in the Public Defender Agency. He worked until recently as deputy director under Ms. Cherot but now works as an assistant federal public defender.

MR. MUSE characterized Ms. Cherot as an exceptional leader. He emphasized that when Ms. Cherot was appointed as public defender, the agency vacancy rate was crippling and morale was abysmally low. Under Ms. Cherot, morale improved significantly, attorneys got caseload relief and clients benefited. During COVID-19, Ms. Cherot strongly advocated for the rights of clients who had their constitutional rights suspended. He described her as a bright and gifted lawyer, diligent worker, and dedicated public defender. She has a great temperament and exercises impeccable judgment. She is fair and cares deeply about her staff, clients and the agency's mission. She works

with other stakeholders to try to find solutions for systemic problems. He offered his view that she is the most qualified and the person best suited to serve as the public defender.

2:31:05 PM

JEFF ROBINSON, Attorney, representing self, Anchorage, Alaska, highlighted ongoing litigation to compel the Department of Corrections (DOC) to open up visitation between lawyers and clients. He said the goal is to provide clients with access to their attorneys, whether vaccinated or not.

MR. ROBINSON provided his background, that he previously served for eight years as a public defender but is now a partner with a law firm, Ashburn and Mason, working on civil litigation and some criminal defense matters.

MR. ROBINSON described Ms. Cherot as diligent, organized, committed and ethical. He said she is a committed family person and community board member. He said he recommended her without any reservations.

2:33:19 PM

MIKE COREY, Attorney, representing self, Anchorage, Alaska, stated he is a former superior court judge who served for three years. While he awaited an opportunity to testify on SB 15, he heard many issues raised in areas he is knowledgeable about. During his tenure as a judge, he found the criminal justice system was not scaled to address the problems. He recalled the earlier discussion suggesting more trials be held. However, he noted that the criminal justice system does not have the human resources to conduct more than four in-custody trials at one time. He said the committee touched on many issues, including that victims wait for closure during the pretrial period. He offered his willingness to come before the committee to provide his insights.

MR. COREY said he did not see any reason not to confirm Samantha Cherot as the public defender.

2:35:10 PM

CHAIR REINBOLD advised him she would hold a meeting during the legislative interim and the committee would welcome his participation.

2:36:01 PM

CHAIR REINBOLD closed public testimony on the confirmation hearings for Steve Meyer, Leitoni "Lei" Tupou and Samantha Cherot.

[2:36:11 PM](#)

SENATOR SHOWER stated that in accordance with AS 39.05.080, the Senate Judiciary Standing Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration:

Board of Parole

Steve Meyer - Kenai

Leitoni "Lei" Tupou - Juneau

Public Defender

Samantha Cherot - Anchorage

Signing the reports regarding appointments to boards and commissions in no way reflects individual members' approval or disapproval of the appointees; the nominations are merely forwarded to the full legislature for confirmation or rejection.

[2:36:47 PM](#)

At ease

#### **SB 15-OPEN MEETINGS ACT; PENALTY**

[2:38:04 PM](#)

CHAIR REINBOLD reconvened the meeting and announced consideration of SB 15, SENATE BILL NO. 15, "An Act relating to the Open Meetings Act; and establishing a civil penalty for violations of the open meeting requirements by members of governmental bodies."

[CSSB 15(CRA) was before the committee. This is the third hearing on this bill, which was previously held on 3/17/21 and 3/22/21.]

[2:38:39 PM](#)

MELODIE WILTERDINK, Staff, Senator Mia Costello, Juneau, Alaska, responded to questions from the last hearing. She referred to a map from the presentation on March 22, 2021. She explained that in Colorado and Idaho, as opposed to Alaska, actions taken in violation of open meeting requirements are automatically voided. In Alaska, such actions are "voidable," to be determined by the court," after the determination that those actions were, in fact, in violation of the law. This

means that actions taken in violation of the Open Meetings Act in Alaska, as proven in court, may still stand despite the illegality of the meeting in which they were taken.

MS. WILTERDINK said another question was whether a municipal officer acting in a judicial or quasi-judicial capacity would be subject to the Open Meetings Act. AS 44.62.310(d) specifies that the Open Meetings Act does not apply to "a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding." This means that appointed municipal officers acting as judicial officials would not be subject to the Open Meetings Act or SB 15.

[2:40:15 PM](#)

SENATOR KIEHL moved to adopt Amendment 1, work order 32-LS0176\G.3.

32-LS0176\G.3  
Bannister  
3/25/21

#### **AMENDMENT 1**

OFFERED IN THE SENATE  
TO: CSSB 15(CRA)

Page 1, line 3, following "Commission":  
Insert ", the Select Committee on Legislative Ethics,"

Page 1, following line 14:  
Insert a new bill section to read:  
"**\* Sec. 2.** AS 24.60.037 is repealed and reenacted to read:  
**Sec. 24.60.037. Open meetings violations.** If the committee receives a complaint against a person for a violation described in AS 44.62.310(i), the committee shall give the respondent due notice and an opportunity to be heard. If, at the conclusion of the hearing, the committee determines that the respondent engaged in the alleged violation, the committee shall assess a civil penalty under AS 44.62.310(i). The determination of the committee under this section may be appealed to the superior court. The committee shall, by regulation, establish procedures to implement this section, including procedures for investigating and holding hearings on complaints."

Renumber the following bill sections accordingly.

Page 2, following line 10:

Insert a new bill section to read:

"\* **Sec. 4.** AS 44.62.310(h) (3) is amended to read:

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a body of the legislative branch of state government, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; "public entity" [IT] does not include the court system [OR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT]."

Renumber the following bill sections accordingly.

Page 2, following line 11:

Insert a new paragraph to read:

"(4) "body of the legislative branch of state government" means

(A) the senate;

(B) the house of representatives;

(C) the senate and the house of representatives meeting in joint session;

(D) a committee of the legislature, other than the Committee on Committees, but including a standing committee, special committee, joint committee, conference or free conference committee, committee of the whole, and permanent interim committee;

(E) a legislative commission, task force, or other group established by statute or resolution; or

(F) a caucus of members of one or more of the bodies set out in (A) - (E) of this paragraph;"

Renumber the following paragraphs accordingly.

Page 2, lines 13 - 14:

Delete "has the meaning given in AS 39.50.200 but does not include a judicial officer"

Insert "means

(A) a person included in the definition of "public official" in AS 39.50.200, except a judicial officer; and

(B) a member of the legislature;"



Page 2, line 15:

Delete "a new subsection"

Insert "new subsections"

Page 2, line 17, following "body":

Insert ", except a community council established by a municipality,"

Page 2, line 20, following "a":

Insert "(1)"

Page 2, line 22, following "AS 44.23.020(1)":

Insert ";

(2) member of a body of the legislative branch of state government is alleged to have violated this subsection, the Select Committee on Legislative Ethics established under AS 24.60.130 shall enforce this subsection under AS 24.60.037.

(j) In the case of an alleged violation under (i) of this section by a member of a body of the legislative branch of state government, if there is a conflict between (i) of this section and the Uniform Rules of the legislature, the Uniform Rules govern"

Page 2, lines 22 - 23:

Delete "In this subsection, "governmental body" does not include a community council established by a municipality."

Page 2, line 26, following "Act,":

Insert "AS 24.60.037, as repealed and reenacted by sec. 2 of this Act,"

Page 2, line 27:

Delete "sec. 2 of this Act, AS 44.62.310(h)(4) and (5), added by sec. 3 of this Act,"

Insert "sec. 3 of this Act, AS 44.62.310(h)(3), as amended by sec. 4 of this Act, AS 44.62.310(h)(4) - (6), added by sec. 5"

Page 2, line 28:

Delete "AS 44.62.310(i), added by sec. 4"

Insert "AS 44.62.310(i) and (j), added by sec.

6"

CHAIR REINBOLD objected for discussion purposes.

SENATOR KIEHL explained that Amendment 1 would include the legislature in governmental bodies that must adhere to the Open Meetings Act. He characterized it as a fundamental issue of fairness for the legislature to follow the same rules to provide transparency. The enforcement would fall under the Select Committee on Legislative Ethics. If this provision passed, the legislature would need to amend the Uniform Rules via a resolution.

[2:42:15 PM](#)

CHAIR REINBOLD asked what violations have been occurring that Amendment 1 would address.

SENATOR KIEHL answered that it was not a question that someone was doing something wrong. The legislature is not subject to the same rules but would be under Amendment 1. He related his understanding that Amendment 1 would include caucuses as public meetings so those meetings would need to be public noticed.

[2:42:54 PM](#)

SENATOR HUGHES offered her belief that Amendment 1 represents a major policy change since it will shift the discussion from the Open Meetings Act to the Legislative Ethics Act. She suggested that it would be better to address legislative ethics in a separate bill. She pointed out that essentially any violation of the Ethics Act by a legislator would result in a penalty. She asked if her interpretation is correct.

SENATOR KIEHL answered no. He offered his view that it would only result in a penalty if a legislator violated the Open Meetings Act.

SENATOR HUGHES related her understanding that legislators were under the Ethics Act. She asked if Amendment would put legislators under both Acts.

SENATOR KIEHL answered yes. He recalled the Ethics Act relates more to not accepting gifts and other conflicts of interest. He offered his belief that this would subject legislators to the same set of rules as the executive branch and municipal governments need to follow.

[2:44:56 PM](#)

SENATOR HUGHES asked why the legislature was not included in the Open Meetings Act in the enabling legislation. Instead, it was left to the Legislative Ethics Act and the Uniform Rules.

SENATOR KIEHL replied that he did not prepare a complete history. However, the question before the committee today is whether the legislature must abide by the same rules that are appropriately imposed on other elements of government. The public has a right to view the deliberations of policy matters.

SENATOR HUGHES stated that the legislature must notice public meetings. Some provisions in the Ethics Act meet the public's need for transparency. Without a full presentation on the current requirements for the legislature, it would be difficult to support Amendment 1. She voiced that she does not have anything to hide but the changes provided by Amendment 1 would be significant.

[2:46:27 PM](#)

SENATOR MYERS said he understood the rationale of Amendment 1. He asked if the legislature would repeal current statutes that apply to legislators if the legislature was subject to the Open Meetings Act.

SENATOR KIEHL answered no. Amendment 1 does not repeal the Uniform Rules, he said. He acknowledged that the Uniform Rules would need some adjustments if Amendment 1 were to pass. Until then, the Uniform Rules would govern, he said.

[2:47:43 PM](#)

CHAIR REINBOLD asked if his intent is to place the executive branch and municipal officials and the legislature under the Uniform Rules, the Legislative Ethics Act and the Open Meetings Act.

SENATOR KIEHL answered that he did not believe the Uniform Rules would provide the executive branch or municipal government with much guidance. He offered his belief that the executive branch ethics is more restrictive than the Legislative Ethics Act. Amendment 1 would conform the legislature to the open meetings principles but does not apply to the Public Records Act, which did not seem germane.

CHAIR REINBOLD offered her view that everyone should operate under the same rules, including the Uniform Rules, the Legislative Ethics Act and the Open Meetings Act. She asked for the sponsor's intent.

[2:49:16 PM](#)

MS. WILTERDINK said it was not the sponsor's intent to exclude the legislature from the penalty provision in SB 15. She related her understanding that to update the Uniform Rules would require a resolution. She deferred to Legislative Legal Services to respond.

[2:50:19 PM](#)

TERRY BANNISTER, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, Alaska, said it is true the legislature would need to pass a resolution. She said the Uniform Rules would govern even if the bill was adopted.

[2:51:18 PM](#)

SENATOR SHOWER agreed that Amendment 1 would be a significant change. He asked how the mechanics would work.

SENATOR KIEHL agreed that Amendment would institute significant changes. For example, only three members could discuss an issue without being in an open setting. He said members could meet for coffee or dinner but members could not discuss business. He stated that members can go into executive session based on a list of acceptable reasons, including litigation and contracts. He said the sponsor did not object to Amendment 1.

[2:53:38 PM](#)

SENATOR HUGHES stated she did not hear Ms. Wilterdink mention that the sponsor supported Amendment 1. She also wondered whether the committee had enough information about the overall implications of Amendment 1 or if it passes the single-subject rule.

MS. WILTERDINK said the sponsor would like clarity on certain parts of Amendment 1 related to caucuses and whether Uniform Rules would be applied first or if the Open Meetings Act would apply.

[2:56:22 PM](#)

CHAIR REINBOLD suggested that Senator Kiehl work with the sponsor.

CHAIR REINBOLD tabled Amendment 1.

[2:56:50 PM](#)

CHAIR REINBOLD opened public testimony on SB 15.

[2:57:24 PM](#)

MIKE COREY, representing self, Anchorage, Alaska, stated that he was glad the committee was considering SB 15. He disclosed that he is counsel for the Alaskans for Open Meetings, but he is speaking on behalf of himself today. He suggested the committee consider changing "voidable" to "void." He explained that if the Open Meetings Act is violated, it should be "void" and the legislature should not rely on the courts to consider the rationale for open meetings. Many of the criteria in [AS 44.62].310 incorporates [AS 44.62].312, which relate to policy statements. Five of the factors essentially say that if the activities during the violation are significant or challenging to walk back, those are the very activities the public should be allowed to attend. The policy considerations in [AS 44.62].312 are the very reasons for enacting the Open Meetings Act. It doesn't make sense to have each judge revisit the topic.

MR. COREY offered his view that if two or more people are in session, the public should be allowed to attend in person. He offered his view that E-attendance was not meant to provide a means to exclude the public but rather was intended to be for the publics' convenience. He acknowledged that during COVID-19 if meetings are held entirely by Zoom that E-attendance might be sufficient.

[2:59:52 PM](#)

LOUIS IMBRIANI, representing self, Anchorage, Alaska, spoke in support of adding a penalty to the Open Meetings Act in SB 15. It will give citizens another way to hold elected officials accountable for their actions. Currently, holding elected officials accountable can be a long, arduous and expensive process.

[3:00:42 PM](#)

FRANK MCQUEARY, President, Alaskans for Open Meetings, Anchorage, Alaska, spoke in support of tightening up the existing statutes for the Open Meetings Act. He expressed concern that there is not a penalty for violating the Open Meetings Act. He referred to [AS 44.62.310] (f). He stated that moments ago Mr. Corey alluded to the "voidable" language in the Open Meetings Act that automatically defers any dispute to the court. He offered his view that this language provides a framework for the court to find excuses for the Open Meetings Act violations. He expressed concern that without erecting barriers for bad behavior, more bad behavior will occur. SB 9 closely mirrors a bill then-Representative Ted Stevens introduced in 1966. He said this bill is simple, clear, and

shifts a little power to the public. Since litigation is costly for private individuals, but officials can use publicly paid attorneys, these positive changes to the Open Meetings Act could help the public.

[3:03:48 PM](#)

One public testifier, Theresa Obermeyer, Anchorage, Alaska was not able to testify due to audio difficulties.

[3:04:39 PM](#)

CHAIR REINBOLD closed public testimony on SB 15.

[SB 15 was held in committee.]

[3:06:34 PM](#)

There being no further business to come before the committee, Chair Reinbold adjourned the Senate Judiciary Standing Committee meeting at 3:06 p.m.